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Supreme Court, U.S.
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No. 95-1040

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

STATE OF ALABAMA,

Petitioner,

v.

MARK ANTHONY SEELEY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

BRIEF IN OPPOSITION

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7pp

TABLE OF CONTENTS

	PAGE NO. :
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
ARGUMENT	2

TABLE OF CASES

PAGE NO. :

UNITED STATES v. JACOBSEN

466 U. S. 109, 80 L.Ed.

2d 85, 104 S. Ct. 1652 (1094) 2, 3, 4

STATEMENT OF THE CASE

The Respondent, Mark Anthony Seeley, who will hereinafter be referred to as "Seeley," accepts the Petitioner's, hereinafter referred to as "State," statement of the case with the exclusion on the self-serving descriptions of the holding by the Alabama Court of Criminal Appeals.

STATEMENT OF THE FACTS

Seeley accepts the State's statement of the facts.

ARGUMENT ONE

The petition for a writ of certiorari should not be granted as the State is clearly seeking a review of the factual findings and/or the misapplication of a properly stated rule of law.

This is a search and seizure issue. The facts are undisputed. The Alabama Court of Criminal Appeals applied the facts to a properly stated rule of law. The rule of law is contained in United States v. Jacobsen, (466 U. S. 109, 80 L. Ed. 2d 85, 104 S. Ct. 1652 [1989]). The issue is what action can the government take after seizing an "effect" which was initially seized by private action. In Seeley, the effect was a Federal Express package that had been detained by an employee of Federal Express. The rule of law is that additional invasions of the respondent's privacy by the government agent must be tested by the degree to which they exceeded the scope of the private search. After review, the Alabama Court of Criminal Appeals held that Seeley had a

legitimate expectation of privacy in his sealed package and that the State should have obtained a search warrant. The Court further held that there were no exigent circumstances that justified opening the package before obtaining a search warrant.

ARGUMENT TWO

The petition for a writ of certiorari should not be granted in that the decision of the Alabama Court of Criminal Appeals and the Supreme Court of Alabama does not conflict with a United States Court of Appeals nor does this issue presented need to be settled by the Supreme Court of the United States.

The decision by the Alabama Court of Criminal Appeals in Seeley is entirely consistent with Jacobsen. The State alleges that the Court of Criminal Appeals misread the facts in Jacobsen to be that the private parties, rather than the government agents, opened the plastic bags of drugs. It is

unclear as to how the State reached this opinion. It is clear by a careful reading of Jacobsen that the supervisor cut open the tube and observed the white powder. The government "re-examined" the contents. In Seeley, the State made the initial intrusion into the actual package. The Alabama Court of Criminal Appeals applied Jacobsen to the facts of Seeley.

The remaining litany of cases the State cited in its petition do not apply to this fact situation. We submit that the rule of law was properly stated in Jacobsen and correctly applied by the Court of Criminal Appeals to the Seeley facts.. We further submit that the petition for certiorari should be denied.